

Title:	Sexual Harassment Policy	
Purpose:	To prohibit and prevent sexual harassment and to establish procedures for handling sexual harassment complaints, investigations and corrective actions.	
Issued by:	Administration-Equal Opportunity Office	Date: February 15, 2005
References:	Civil Rights Act of 1964, Title VII, S. 703; Hawaii Revised Statutes (HRS) Chapter 378; Revised Charter of the City and County of Honolulu (RCH) §6-1112; Revised Ordinances of Honolulu (ROH), Article 1-17; Civil Service Rule §2-8; Mayor's Directive 94-6 (8-17-94).	

I. COVERAGE

This policy covers and is applicable to all officers and employees, whether under civil service, exempted from civil service, or under personal services contract, individuals who are under consideration for City employment, and individuals who are engaged in business or other activity with the City.

II. POLICY

- A. It is illegal and against City policy for any officer or employee to sexually harass or engage in the sexual harassment of another officer, employee, individual under consideration for City employment, or an individual engaged in business or other activity with the City.
- B. All employees have a right to expect a workplace devoid of sexual harassment. The City, its departments and agencies (hereinafter referred to as departments), its management and supervisory personnel, have a responsibility to prevent acts of sexual harassment whether committed by supervisors, agents, other employees, or non-employees.
- C. The City will not condone or tolerate sexual harassment in the workplace. Violations of the sexual harassment policy by any officer or employee will result in appropriate responsive action. Responsive action may include discharge, if appropriate.
- D. Each appointing authority shall adopt and enforce this policy. Departments may establish policies and procedures in addition to, but consistent with, this policy upon review and approval of the Director of Human Resources (Director).

III. DEFINITIONS

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or visual display of a sexual nature when:

- 1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- 2. Submission to or rejection of such conduct is used as the basis for employment decisions or as the basis to employ or reject the individual for City employment; or

3. Submission to or rejection of such conduct is used as the basis for decisions on the individual's engagement in business or other activity with the City; or
4. Such conduct has the purpose or effect of substantially interfering with an individual's work performance, application for City employment, or engagement in business or other activity with the City; or
5. Such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment.

"Offender" means an individual who has engaged in sexual harassment.

"Victim" means an officer, employee, an individual under consideration for City employment, or an individual engaged in business or other activity with the City who has been subjected to sexual harassment.

IV. RESPONSIBILITIES

A. Individuals

All personnel, whether an officer or an employee, must refrain from conduct of a sexual nature that could be considered inappropriate or unwelcome in the workplace, including, but not limited to, the following conduct:

1. Making unwelcome sexual advances or requests for sexual favors;
2. Making remarks of a sexual nature;
3. Using gender based or sexually abusive language and sexual innuendoes;
4. Visually displaying materials of a sexual nature; and
5. Physical contact of a sexual nature.

B. Managers and Supervisors

1. The supervisor represents management to subordinate employees. Therefore, each manager and supervisor is accountable for the proper conduct of all employees under his/her supervision, including preventing sexual harassment and taking measures to stop sexual harassment should it occur. A manager or supervisor shall not knowingly permit a subordinate officer or employee to engage in conduct prohibited by this policy.
2. Failure by a manager or supervisor to control sexual harassment may be cause for disciplinary action against the manager or supervisor. Managers and supervisors may be held to a higher standard of conduct and accountability as a management representative.
3. Managers shall communicate this policy and the avenues available for resolution of sexual harassment issues at the worksite to all employees. Management shall keep supervisors aware of the requirement to guard against the various types of harassment that might potentially occur within their area of responsibility.

4. Managers shall ensure that the director is informed of all complaints and that a sexual harassment complaint within his/her area of responsibility is properly investigated and expeditiously acted upon in accordance with the procedures outlined in this policy. Managers shall not knowingly permit a subordinate officer or employee to engage in conduct prohibited by this policy. Upon completion of the investigation, results shall be reported to the director and the complainant.
5. Management shall ensure compliance with all procedures of this policy. All actions or inactions by management will be examined to ascertain the extent of their efforts to control sexual harassment. Failure by managers to prevent and/or take action against sexual harassment may be cause for disciplinary action. Managers may be held to a higher standard of conduct and accountability with regard to acts of sexual harassment or failing to prevent sexual harassment in the workplace.

V. USE OF THE "REASONABLE PERSON OF THE SAME GENDER STANDARD"

In determining whether alleged conduct constitutes sexual harassment, an officer, employee, or team investigating a complaint of sexual harassment shall use the "reasonable person of the same gender standard." Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the alleged victim's gender.

VI. COMPLAINT AND INVESTIGATION PROCEDURES

A. Who may file a complaint

1. Any officer or employee who feels subjected to sexual harassment should immediately make a complaint to his/her immediate supervisor unless the supervisor is the individual committing the alleged harassment. If the immediate supervisor is the alleged offender, such conduct should be reported to the next higher level supervisor, department director or equal employment officer (EEO), or the City's EEO officer.
2. An individual under consideration for City employment or engaged in business or other activity with the City, who feels they have been subjected to sexual harassment, should immediately make a complaint to the alleged offender's immediate supervisor, department director or EEO officer, or the City's EEO officer.

B. Complaint

1. Each department shall allow an alleged victim of sexual harassment to make an informal complaint, verbally or in writing, or a formal complaint, in writing. When making a complaint, the alleged victim shall name the alleged offender, if the alleged offender's identity is known, and state the nature and circumstances of the alleged sexual harassment.
2. A formal complaint may be made without first making an informal complaint or while an investigation or resolution of an informal complaint is pending.

3. A team of officers and employees shall promptly investigate the complaint. The team shall be selected by the alleged offender's director or designee, or, if the director is the alleged offender, by the City's EEO officer. The team shall include at least one member of each gender. At least one departmental EEO officer shall be on the team. The team of Investigating officers and employees may be from any City department/agency.

C. Investigation

1. The investigation shall be conducted in an unbiased, fair and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment.
2. The alleged offender shall be allowed to respond to the complaint.
3. In determining whether conduct constitutes sexual harassment, the investigators shall consider the record as a whole and the totality of the circumstances, such as the nature of the sexual harassment and the context in which the alleged incidents occurred.
4. The investigation will be conducted within 10 working days after the complaint is filed. Any extension beyond 10 working days must be justified to, and approved by, the City's EEO officer or designee. A report of the findings of the investigation will be prepared and submitted to the appropriate decision maker.

VII. DISCIPLINARY AND OTHER ACTIONS

- A. An officer or employee who is found, after an investigation, to be an offender shall be warned not to sexually harass or retaliate against the victim; or as deemed warranted, appropriately disciplined.
- B. Any disciplinary action shall be determined in accordance with "just cause" standards and on a case-by-case basis, with consideration of the severity of the sexual harassment and, if any, other incidents of sexual harassment by the offender.
- C. All disciplinary actions, prior to implementation, shall be reviewed by Labor Relations Division and Director. Approval by the City's EEO officer is required before proposed disciplinary action is taken.
- D. If the complaint is deemed true and/or conduct in violation of the policy is found, the offender shall be notified in writing of the investigation results, any discipline if warranted, and informed that sexual harassment and victim retaliation is a violation of Federal and State laws and City policy. Due process procedures shall be adhered to when imposing any discipline in accordance with Section VII of this policy. The victim shall be notified that appropriate disciplinary action has been taken and that there will be no retaliation.
- E. If the complaint is deemed false or unsupported by the evidence, the complaint shall be dismissed. Both parties shall be notified in writing of the dismissal.

- F. A complete confidential record of the investigation shall be maintained for future reference and proceedings.
- G. All disciplinary actions shall be in accordance with civil service rules or applicable collective bargaining agreement.

VIII. CONFIDENTIALITY

- A. The names of the alleged victim and offender (s) during the investigation of a complaint, shall remain confidential, but may be revealed to the following:
 - 1. Each other;
 - 2. Any officer or employee investigating a complaint;
 - 3. The alleged victim's or alleged offender's director;
 - 4. City's EEO officer;
 - 5. Director or designee;
 - 6. Witnesses to the alleged sexual harassment; and
 - 7. Any other person to whom revealing the names is necessary to conduct the investigation.
- B. Witnesses and all others involved in the investigation shall be directed to maintain the confidentiality of the incident and investigation.
- C. Each department shall maintain the confidentiality of the written report on a complaint and investigation. Inspection of the report shall be permitted only by the following:
 - 1. The parties to the complaint (i.e., victim and accused);
 - 2. Officers or employees involved in the management, supervision or disciplining of the parties to the complaint;
 - 3. City's EEO Officer;
 - 4. Director or designee; and
 - 5. Other individuals authorized by law or ordinance.
- D. Because the investigation necessitates that potentially defamatory statements be repeated, absolute confidentiality shall not be promised; however, the investigation shall be conducted professionally and as discreetly as possible, with disclosures made only when the investigation requires.

IX. RETENTION OF WRITTEN REPORT ON COMPLAINT AND INVESTIGATION

- A. Reports and supporting documentation of complaints which are deemed to be true shall be retained by the departmental EEO officer for at least five (5) years after the offender terminates service as a City officer or employee. Thereafter, such documentation shall be forwarded to the City's EEO officer or designee to preserve evidence that might be needed for legal defense in cases filed against the City.
- B. Reports of dismissed complaints shall be forwarded and retained by the City's EEO officer or designee for preservation of evidence.

X. FURTHER ACTION WHEREIN AN INDIVIDUAL IS NOT SATISFIED BY MANAGEMENT'S RESPONSE

If the complainant is not satisfied with the resolution, the complainant may:

- A. Submit a grievance under the collective bargaining grievance procedure, if applicable; or
- B. File a complaint with the Civil Service Commission, if applicable; or
- C. File a complaint with the Hawaii Civil Rights Commission within 180 calendar days of the alleged occurrence of sexual harassment, if applicable; or
- D. File a complaint with the Federal EEO Commission within 300 calendar days from the date of the alleged occurrence of sexual harassment.

It is strongly encouraged that any individual who feels that they are the subject of sexual harassment first seek internal remedies before utilizing outside agencies.

XI. NON-RETALIATION

- A. There shall be no retaliation or discrimination against an officer or employee who has complained of sexual harassment, conducted an investigation of a complaint or acted as a witness during an investigation of a complaint. Retaliatory conduct is illegal and constitutes a separate violation of laws and rules. Any retaliation or discriminatory action should be reported by the individual and dealt with promptly and severely by management.
- B. An officer or employee who retaliates against another officer, employee, an individual under consideration for City employment, or an individual engaged in business or other activity with the City, shall be disciplined in accordance with applicable provisions of this policy or other appropriate disciplinary action authorized by law, ordinance or rule. If the officer or employee is covered by a collective bargaining agreement, the disciplinary action against the officer or employee shall comply with such agreement.

XII. FOLLOW-UP

- A. Follow-up inquiries shall be made by the department EEO officer, division head, or designee, to ensure that harassment has not resumed and the victim has not suffered retaliation. If inquiries reveal such occurrences, they shall be appropriately

dealt with by management. Management shall notify the Department of Human Resources (DHR) and the City's EEO officer of the occurrence(s) and their corrective action.

- B. Even where the results are inconclusive, the situation shall be closely monitored and reviewed by the department EEO officer, division head, or designee, in order to ensure that the problem has been solved.

XIII. MALICIOUS FALSE COMPLAINT

- A. An officer or employee shall not make a malicious false complaint of sexual harassment.
- B. An officer or employee who makes a malicious false complaint shall be subject to appropriate discipline imposed in accordance with Section VII of this policy or other disciplinary action authorized by law, ordinance or rule.
- C. Disciplinary action against an officer, employee or individual making a malicious false complaint shall not be considered retaliation as prohibited under Section XI.

XIV. TRAINING

- A. All officers and employees will receive training on the sexual harassment policy during their orientation period and at least once every two years thereafter.
- B. Upon being promoted to a supervisory or managerial position, the newly promoted will attend a training class for supervisors and managers on sexual harassment, regardless of the date of their most recent sexual harassment policy training as an employee.
- C. The DHR shall be responsible for formulating and coordinating the training program on sexual harassment.
- D. Each department shall be responsible for ensuring its employees are trained in accordance with direction provided by the DHR.

XV. DISSEMINATION OF INFORMATION

The content of this policy shall be communicated to all employees, including supervisors, through normal departmental channels and may be posted on employee bulletin boards. This policy may be posted at workplaces where applications for City employment are accepted. This information shall be discussed with new employees in orientation and training classes and, from time to time, in departmental staff meetings. Widespread dissemination of this information and compliance with this policy will be evidence of affirmative action in the evaluation of the City's anti-discrimination program.

XVI. CONFLICT WITH COLLECTIVE BARGAINING AGREEMENTS

Should there be a conflict between this policy and applicable collective bargaining agreements, the provisions of the collective bargaining agreements shall supersede any requirements under this policy unless doing so would violate a federal, state or local law.